

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----x  
**IEI INC.,**  
  
**Plaintiff,**  
  
**v.**  
  
**ETG CAPITAL LLC,**  
  
**Defendant.**  
-----x

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC#:  
DATE FILED: 1/27/2021

**1:19-cv-05049-ALC-JLC**

**ORDER**

**ANDREW L. CARTER, JR., District Judge:**

On October 19, 2020, Plaintiff moved for summary judgment. ECF Nos. 34-37. On November 4, 2020, Defendant opposed this motion. ECF Nos. 40-41. Plaintiff replied on November 11, 2020. ECF Nos. 43-45.

On November 12, 2020, Defendant requested a pre-motion conference to move to strike certain documents appended to the reply that Defendant contended had not been produced. ECF No. 46. On November 17, 2020, Plaintiff opposed this request, arguing, in part, that the documents were appropriately included in the reply to respond to Defendant's argument that Plaintiff had failed to satisfy a condition precedent, which was raised for the first time in the opposition. ECF No. 47. After a December 7, 2020 conference, the parties filed a joint status report laying out their positions regarding how to proceed. ECF No. 50. The parties submitted further letters on the issues, including at the Court's request. ECF Nos. 51-52, 54-55.

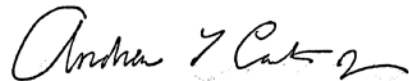
At the December 7, 2020 conference, the Court indicated that it was inclined to deny the summary judgment motion without prejudice and return the parties for appropriate discovery on the condition precedent defense Defendant raised in its opposition. Upon consideration of the parties' submissions, the Court cannot conclude that it would be futile to allow Defendant to pursue the condition precedent defense and will permit the Defendant to advance the argument. However, the Court also concludes that Plaintiff is entitled to discovery on this issue. The Court therefore adopts the path it suggested at the December 7, 2020 hearing.

Accordingly, the Court hereby DENIES the pending motion for summary judgment without prejudice. The parties are directed to engage in discovery on the condition precedent issue under the guidance of Magistrate Judge Cott. The Clerk of Court is respectfully directed to close the motion at docket number 34.

**SO ORDERED.**

**Dated: January 27, 2021**

**New York, New York**

  
**ANDREW L. CARTER, JR.**  
**United States District Judge**